



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART 504 FW 1, 2, 3, 4, 5 & 640 FW 1	SUBJECT Department of Agriculture Programs Inventory Property Disposal Program Debt Cancellation Conservation Contract Program Wetlands Reserve Program Wetland Conservation - Swampbuster USDA Conservation Programs Management of Non-Owned Lands Partners for Fish and Wildlife Program	RELEASE NUMBER 431
ORIGINATING OFFICE Division of Fish and Wildlife Management and Habitat Restoration		DATE September 24, 2003

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters are the Service Partners for Fish and Wildlife Program policy. They establish goals, requirements, limitations, and priorities for habitat improvement projects and technical assistance provided to private landowners.


Deputy DIRECTOR

FILING INSTRUCTIONS:

Remove:

504 FW 3, 01/11/95, FWM 168
None
504 FW 7, 02/17/95, FWM 175
504 FW 6, 02/17/95, FWM 174
504 FW 8, 02/17/95, FWM 176
Appendix 1, 504 FW 8, 02/17/95, FWM 176
Appendix 2, 504 FW 8, 02/17/95, FWM 176

Insert:

504 FW 1, 09/24/03, FWM 431
504 FW 2, 09/24/03, FWM 431
504 FW 3, 09/24/03, FWM 431
504 FW 4, 09/24/03, FWM 431
504 FW 5, 09/24/03, FWM 431
None
None
640 FW 1, 09/24/03, FWM 431

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4.1 What is the purpose of this chapter? This chapter establishes our policy for assisting the U.S. Department of Agriculture (USDA) in implementing the Wetland Conservation or Swampbuster provisions of the Food Security Act of 1985, as amended. As used in this chapter, the terms "we," "our," and "Service" refer to the Fish and Wildlife Service.

4.2 What are the Swampbuster provisions? The Food Security Act of 1985 contains several provisions that were intended to discourage the conversion of wetlands to agricultural production. These provisions, often referred to as Swampbuster provisions, state that a person will be ineligible for all or a portion of certain USDA program benefits, including loans, subsidies, crop insurance, and price support programs, if the person produces an agricultural commodity on wetland that was converted after December 23, 1985. A person will also be ineligible if, after November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect of, making possible the production of an agricultural commodity. For the former, the person would lose eligibility for all or a portion of the crop year of the commodity that was planted on the converted wetland. For the latter, the person would lose eligibility during the crop year that is equal to the calendar year during which the violation occurred as well as each subsequent crop year until the converted wetland is restored or the loss of wetland functions and values has been mitigated prior to the beginning of such calendar year in accordance with USDA requirements in 7 CFR 12.5. Some agricultural activities are exempt from Swampbuster regulations, such as the production of an agricultural commodity on wetlands, when the conversion of the wetland was "commenced" prior to December 23, 1985; conversion of artificial wetlands; and activities that result in a minimal effect on wetland functions and values. (See 7 CFR 12.5 for more information.)

4.3 What are the authorities for this chapter?

- A. Food Security Act of 1985.
- B. Food Agriculture, Conservation, and Trade Act of 1990.
- C. Federal Agriculture Improvement and Reform Act of 1996.
- D. Farm Security and Rural Investment Act of 2002 (2002 Farm Bill).
- E. 7 CFR 12.

4.4 Who is responsible for implementing the Swampbuster provisions within the Service?

A. Assistant Director - Fisheries and Habitat Conservation. The Assistant Director - Fisheries and Habitat

Conservation has oversight responsibilities as well as the lead role in providing the Service's Swampbuster technical assistance, and is authorized to act for the Service in consultation with USDA agencies regarding Swampbuster-related activities.

B. Chief, Division of Fish and Wildlife Management and Habitat Restoration:

- (1) Plans, develops, and monitors the Service's Swampbuster policies and procedures.
- (2) Prepares guidance, technical assistance and information, and training on Swampbuster policies, procedures, and related activities for Regional Partners for Fish and Wildlife coordinators.
- (3) Provides copies of USDA regulations, policies, and manuals, and all amendments to and revisions thereof, to all Regional Partners for Fish and Wildlife coordinators.
- (4) Represents the Service in discussions with USDA agencies on Swampbuster-related matters and coordinates the resolution of field-level issues elevated to the Washington Office.
- (5) Collect and analyze data on the costs and benefits to the Service of Swampbuster-related activities.

C. Regional Directors will implement Swampbuster provisions within their Region. Each Regional Director will designate a **Regional Partners for Fish and Wildlife coordinators** who will:

- (1) Maintain a current Regional office copy of applicable USDA regulations, policies, and manuals.
- (2) Provide copies of USDA regulations, policies, and manuals, and all amendments thereto and revisions thereof, to all State/Ecoregion Partners for Fish and Wildlife Coordinators.
- (3) Provide guidance to Service field offices regarding Swampbuster technical assistance to USDA agencies and ensure that our employees adhere to the guidance contained in applicable USDA regulations, policies, and manuals.
- (4) Apprise the Division of Fish and Wildlife Management and Habitat Restoration of the level of technical assistance being provided by the field and of the impact of that assistance on the protection of wetland resources and Federal trust species and their habitats.

D. State/Ecoregion Partners for Fish and Wildlife coordinators will:

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(1) Maintain a current field office copy of USDA regulations, policies, and manuals.

(2) Participate on the USDA's Natural Resources Conservation Service (NRCS) State technical committee and provide technical assistance to maximize the benefits to Federal trust species and to the Nation's wetland resources.

(3) Provide technical assistance to NRCS as described in the State-level implementation plans and to NRCS and the Farm Service Agency (FSA), upon request, on Swampbuster wetland conservation and protection issues.

4.5 Who administers the Swampbuster provisions? FSA and NRCS administer the Swampbuster provisions. FSA makes determinations regarding such things as whether land is or was planted to an agricultural commodity or was designated as conservation use; the establishment of field boundaries; whether or when conversion of a wetland commenced; and amounts of benefit reductions. NRCS makes wetland determinations and minimal effects determinations, and determines whether or not a farmed wetland or farmed wetland pasture is abandoned. NRCS also reviews plans for mitigation of converted wetlands. NRCS provides Swampbuster technical assistance to agricultural producers regarding the effects of agricultural activities and practices on wetlands. NRCS's objective in providing this technical assistance is to help agricultural producers remain eligible to participate in Federal farm programs. USDA makes eligibility and exemption determinations described in paragraph 4.2 based on technical information provided by NRCS.

4.6 Why does the Service assist USDA in implementing the Swampbuster provisions? As a steward of the Nation's fish and wildlife resources and upon request from USDA, we provide technical assistance to ensure that Federal trust resources are taken into account when NRCS provides technical assistance to agricultural producers. We use 1121-TA funds to provide technical assistance and biological expertise concerning wetland functions and the impact of proposed or ongoing agricultural practices and activities on wetlands. By providing such assistance and expertise, we can aid in the protection of wetlands and maximize their benefits to Federal trust species.

4.7 What is the Service's role in assisting USDA in implementing the Swampbuster provisions?

A. USDA Regulations. In addition to authorizing NRCS to request technical assistance from the Service, USDA regulations at 7 CFR 12.30 require NRCS to:

(1) Coordinate with the Service and others in updating the National List of Plant Species that Occur in Wetlands.

(2) Assure quality of service and determinations through procedures developed by NRCS in consultation with other Federal agencies that have wetland responsibilities.

(3) Develop a process at the State level, in coordination with the Service, to ensure that the USDA wetland conservation provisions are carried out in a technically defensible and timely manner.

(4) Conduct reviews of implementation and provide the Army Corps of Engineers, the Environmental Protection Agency, and the Service an opportunity to participate in the reviews.

(5) Complete certification of wetland determinations according to delineation procedures agreed to by the Army Corps of Engineers, the Environmental Protection Agency, and the Service.

B. 1994 MOA. Memorandum of Agreement, January 6, 1994, Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, describes the roles of the signatory agencies and the procedures for identifying wetlands for purposes of implementing both the Swampbuster provisions and Section 404 of the Clean Water Act.

C. 2002 MOU. Memorandum of Understanding, August 6, 2002, Regarding the Implementation of the 2002 Farm Bill Conservation Provisions, obligates the USDA and Department of the Interior (DOI) to coordinate, to the extent practicable, on activities that complement USDA's efforts to implement the 2002 Farm Bill as it relates to conservation programs, including information sharing and exchange of valuable perspectives. In addition, the 2002 MOU states that, on an ongoing basis, DOI, and thus the Service, will provide data and information to support any DOI concerns to USDA through regular meetings and other means of information exchange. For both reauthorized programs and new programs contained in the 2002 Farm Bill, we will communicate with USDA to ensure that interagency coordination opportunities are fully utilized and that field staffs are collaborating on developing and implementing projects.

D. Guidance. For the purposes of benefitting Federal trust species and the Nation's wetland resources, we will provide technical assistance to NRCS in developing State-level Swampbuster implementation plans as required by the 1994 MOA, and will provide other guidance to NRCS and to FSA when requested by these agencies.

E. Coordination. We will work closely with NRCS, FSA, and applicable agricultural producers in providing the requested technical assistance, while strictly adhering to the procedural requirements of the applicable USDA policies, regulations, and manuals and the 1994 MOA (paragraph 4.7B) and the 2002 MOU (paragraph 4.7C).

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F. Biological Functions. Service technical assistance will focus on assessment of the current as well as the anticipated wetland biological functions associated with site-specific wetland actions and proposed actions.

G. Minimal Effects. For minimal effects determinations under 7 CFR 12.31(d), we should provide to NRCS a written assessment of whether or not proposed activities would have a minimal effect on the biological functions associated with the subject wetland(s). The assessment should also include, as appropriate, recommendations for alternatives to the proposed activities that would result in a minimal effect on the wetland(s) functions and values.

H. Mitigation. For mitigation plan development, we should provide to NRCS a written assessment of whether or not proposed mitigation actions would replace biological functions equivalent to those lost by associated wetland conversion activities. This assessment should also include, as appropriate, recommendations for alternatives that could replace biological functions equivalent to those lost.

4.8 Are there any reporting requirements? At a minimum, Regions will report on the annual review that the NRCS is required to perform on the State level process developed by NRCS in consultation with the Service, to ensure that the USDA wetland conservation provisions are carried out in a technically defensible and timely manner. Additional reporting requirements will be coordinated, on a Regional basis, with the Division of Fish and Wildlife Management and Habitat Restoration.